IN THE HIGH COURT OF HIMACHAL PRADESH AT SHIMLA

CWP No. 268 of 1998

Judgment reserved on:19.7.2007.

Date of Decision: Ist August, 2007.

Anita Rani … Petitioner.

Versus.

Union of India and others . Respondents.

Coram:

The Hon'ble Mr. Justice Deepak Gupta, Judge.

The Hon'ble Mr. Justice V.K. Ahuja, Judge.

Whether approved for reporting? No.

For the Petitioner: Mr. D.K. Khanna, Advocate.
For the Respondents: Mr. Sandeep Sharma, Assistant Solicitor General.

Deepak Gupta, J.

By means of this writ petition, the petitioner has prayed that the orders of the respondents refusing to grant compassionate appointment to her be set aside and the respondents be directed to grant compassionate appointment to her.

The facts shortly stated are that the petitioner's father was employed as Gangman with the Northern Railways. He died on 4.3.1969 while in service. At that time the petitioner was 2 ½ years old. According to the petitioner her mother remarried in the year 1975 and she thereafter was looked after by her grand father. The petitioner passed matriculation in the year 1983.

According to the petitioner, she, on attaining the age of majority on 20.7.1984 made representations dated 11.9.1984 and 31.5.1985 for appointment on compassionate grounds but she received no response. She thereafter filed a civil suit in the Court of learned Senior Sub Judge, Solan in the year 1989. The suit was decreed on 31.5.1991 to the effect that the petitioner is the daughter of deceased Rampati and she would be entitled to all benefits which would be available to her under law regarding monetary or service benefits. It is clear that there is no direction to give her employment as such. Thereafter, the petitioner filed O.A. No.1091-H.P. of 1991 before the Central Administrative Tribunal claiming that she be given appointment on compassionate grounds. The O.A. was dismissed as withdrawn with liberty reserved to make a representation to the respondents. As the representation filed by the petitioner was not decided by the respondents, the petitioner filed another O.A. No.312-HP-1992. This O.A. was decided on 4.8.1992 with the direction to the respondents that they would decide the representation within two months. The representation was rejected and thereafter the petitioner filed another O.A. No.203-HP-1993. This O.A. was also directed to be treated as representation to the Railway Board vide order of the Tribunal dated 24.12.1993. This representation was also rejected. Thereafter, the petitioner filed another O.A. being O.A. No.457-HP of 1997. This O.A. was rejected vide the impugned order dated 2nd May, 1997. The Tribunal held that the respondents had rejected the application of the present petitioner on the ground that her mother had re-married and that compassionate employment was to be

given only to tide-over the immediate sudden crisis on the death of an employer and is not to be granted after a very long period. The Tribunal held that the decision of the respondents can not be held arbitrary or illegal. Hence, the present writ petition.

We have heard learned counsel for the parties and have gone through the entire record.

In **Umesh Kumar Nagpal v. State of Haryana**, JT 1994 (3) SC 525, the apex Court held as follows:-

> " As a rule, appointments in the public services should be made strictly on the basis of open invitation of applications and merit. No other mode of appointment nor any other consideration is permissible. Neither the Governments nor the public authorities are at liberty to follow any other procedure or re-tax the qualifications laid down by the rules for the post. However, to this general rule which is to be followed strictly in every case, there are some exceptions carved out in the interest of justice and to meet certain contingencies. One such exception is in favour of the dependents of an employee dying in harness and leaving his family in penury and without any means of livelihood. In such cases, out of pure humanitarian consideration taking into consideration the fact that unless some source of livelihood is provided, the family would not be able to make both ends meet, a provision is made in the rules to provide gainful employment to one of the dependents of the deceased who may be eligible for such employment. The whole object of granting compassionate employment is thus to enable the family to tide over the sudden crisis. The object is not to give a member of such family a post much less a post held by the deceased.".

The Supreme Court in **Union Bank of India and others v. M.T.Latheesh,** (2006) 7 Supreme Court Cases 350, while setting aside the judgment of the Division Bench of the High Court of Kerala, held as follows:-

> " 16. The Division Bench, in our opinion, has failed to notice the fact that the fresh employment with the Bank has reduced considerably and the grant of employment on compassionate grounds to all the cases shall shut the door for employment to the ever growing population of unemployed youth, more particularly when the industry is being asked to reduce the employees by offering retirement schemes. The Division Bench has failed to appreciate the fact that the Scheme for compassionate employment is very elaborate and it provides for determination of the financial conditions of the family on various factors and takes into consideration the income of the family from all sources. The High Court also has not noticed that the impugned judgment shall open a Pandora's box of litigation and all the persons who have been denied any such employment shall take recourse to the similar litigation……."

The apex Court further went on to hold as follows:-

> "37. It is settled law that the specially constituted authorities in the rules or regulations like the competent authority in this case are better equipped to decide the cases on facts of the case and their objective finding arrived on the appreciation of the full facts should not be disturbed. Learned Single Judge and the Division Bench by directing appointment has fettered the discretion of the appointing and selecting authorities. The Bank had considered the application of the respondent in terms of the statutory scheme

framed by the Bank for such appointment. After that even though the Bank found the respondent ineligible for appointment to its service, the High Court has found him eligible and has ordered his appointment. This is against the law laid down by this Court. It is settled law that the principles regarding compassionate appointment that compassionate appointment being an exception to the general rule the appointment has to be exercised only in warranting situations and circumstances existing in granting appointment and guiding factors should be financial condition of the family. The respondent is not entitled to claim relief under the new Scheme because the financial status of the family is much above the criterion fixed in the new Scheme."

In the present case the petitioner's father died in the year 1969. More than 38 years have elapsed. She is about 40 years old. Obviously there is no immediate crises of any nature whatsoever. Assuming for the sake of arguments that the petitioner's mother after her remarriage had not looked after her, admittedly she was looked after by her grad father and did her matriculation. By that time the financial crisis, if any, was already over. Keeping in view the law laid down by the Apex court and the facts of the present case it cannot be said that the impugned decision is against law. The writ petition is without any merit and is dismissed. No order as to costs.

(Deepak Gupta), J.

August 1, 2007. (V.K. Ahuja), J.
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